

AMENDING SECTION 1 OF THE ACT APPROVED
JUNE 27, 1947 (61 STAT. 189)

JUNE 25, 1952.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. McMULLEN, from the Committee on Interior and Insular Affairs,
submitted the following

REPORT

[To accompany H. R. 7487]

The Committee on Interior and Insular Affairs, to whom was
referred the bill (H. R. 7487) to amend section 1 of the Act approved
June 27, 1947 (61 Stat. 189), having considered the same, report
favorably thereon with amendments and recommend that the bill do
pass.

AMENDMENTS TO H. R. 7487

The amendments are as follows:

Page 3, lines 2 and 3, strike language beginning with "from" through
"sum" on line 3 and insert in lieu thereof the following:

from October 20, 1947, to the date of payment and no offsets shall be deducted
from any sum determined by the court to be a reasonable, fair, just, and equitable
consideration for the right, interest and property passing to the United States
under and pursuant to said agreement of December 1, 1945, as amended: *Provided
further*, That the foregoing provision relating to interest and offsets shall not
extend to any other claim or claims asserted in any such suit, whether or not the
same arise out of the subject matter of said agreement, but such other claim or
claims, if any, shall be governed by the law relating to actions brought pursuant
to 28 U. S. C., section 1505.

EXPLANATION OF THE BILL

The bill has as its purpose the amendment to section 1 of the act
of June 27, 1947 (61 Stat. 181). Section 1 of the act of June 27,
1947, approved a contract between the United States and the Navajo
Tribe of Indians for the lease and use by the Federal Government of
the oil and helium reserves on some 7,800 acres of land belonging to
the Navajo Indians. The Government by such contract was to pay
to the tribe \$147,799 on a 12½ percent royalty basis and the rental of

25 percent per acre for 25 years. It was unknown at the time of this contract the exact value of the properties leased and every effort was made to arrive at a just analysis of the reserves to be taken from the Indians by the Government. The Congress, however, when the legislation was presented for ratification of the contract became concerned as to whether the Indians were receiving fair and just compensation for the helium reserves to be relinquished to the Government. The Congress, therefore, in the act of June 27, 1947, in approving the contracts added language as follows:

If said Navajo Tribe of Indians shall, after investigation, deem the total consideration payable to it by the United States pursuant to such agreement dated December 1, 1945, as amended, to be in any respect less than reasonable, fair, just, and equitable, said tribe shall be entitled within three years after the date of enactment of this Act to institute suit against the United States in the Court of Claims for the recovery of such additional sum as may be necessary to compensate said tribe for the reasonable, fair, just, and equitable value of all right, interest, and property passing from said tribe to the United States under such agreement, as amended.

Some time after the effective date of this act and pursuant to the above-quoted part of the act the Navajo Indians instituted a suit in the United States Court of Claims alleging in substance the lack of an adequate consideration in such contract for the lease of the helium reserves and made claim against the Federal Government for certain additional sums to make up the inadequate consideration provided by the contract. It is the contention of the Indians that information has become available since the act of June 27, 1947, to prove that the full value of the helium reserves was not known at the time of the sale contract, and that the compensation as provided by the act was inadequate.

The Federal Government in its answer to the suit filed by these Indians among other things has pled offsets. The purposes of H. R. 7487, as amended, is to provide that no offsets shall be deducted from any sum recovered by the Indians in the before-mentioned suit, and to provide for the payment of interest at the rate of 4 percent per annum from October 20, 1947, on any judgment which the court might see fit to give.

The committee gave this matter most serious consideration inasmuch as the committee recognizes the duty of the Federal Government to plead offsets in Indian claims cases. After careful examination of all the facts and evidence presented before the committee, it was the unanimous belief that the present case represents an exception to the general rule of the validity of offsets to claims presented by Indians in the Court of Claims. In effect, the act of June 27, 1947, approved what might be termed a conditional contract in that it provided that the original consideration, if later found to be inadequate, would be more fully determined by the Court of Claims upon presentation to the court for such an adjudication. In other words, Congress recognized the possibility that the consideration as provided for in the contract might be inadequate and specifically made provision for a more complete determination of an adequate consideration for the release of the oil and helium reserves by the Indians. The suit to determine what additional consideration, if any, should be paid to the Indians is one in which the validity of a second installment is to be determined with respect to the contract. To permit the Government to plead offsets as against the consideration to be paid,

if any, would defeat the very language which the Congress saw fit to place in the act of June 27, 1947, as before quoted. If offsets were proved by the Government it would very possibly wipe out all benefits that the Indians might receive in a judgment since such offsets may include almost all sums given by the Federal Government to such Indians.

The committee specifically wishes to point out that its action in approving this measure in denying the Government the plea of offsets is not to be considered a precedent. This is a specific case and is treated by the committee as an exception to the rule. The committee recognizes the right and expects the Attorney General to plead offsets in any and all other types of claims presented by the Indians. Since, however, this matter involved by the bill, H. R. 7487, only involves the determination of a contract price, the committee does not believe that offsets are proper. Testimony before the committee revealed that the Indians would in all probability never have agreed to a settlement of the nature approved by the 1947 act had they known that the Government could have pled offsets to any additional consideration to which they might be entitled for the helium reserves. It is worthy of repetition that the Congress in 1947 stated that if the consideration given for these helium reserves was found—

to be in any respect less than reasonable, fair, just, and equitable, said tribe shall be entitled within 3 years after the enactment of the act to institute suit against the United States in the Court of Claims for the recovery of such additional sum as may be necessary to compensate said tribe.

The Indians believe that the consideration given was not reasonable, fair, just, and equitable, and, therefore, availed themselves of the forum established by the Congress to determine what the fair and equitable consideration should be. This procedure is in effect the method whereby to determine whether a second installment is due on the contract. To permit the Government to plead offsets to any consideration found to be just, fair, and equitable would be to defeat the very purpose of the language provided by the Congress in the 1947 act.

This matter has been most thoroughly considered by the committee and the committee after giving full consideration to all the facts and the law involved believes that justice will best be served by adopting the provisions of H. R. 7487, as amended, which in effect would permit a determination of the adequate consideration on the contract without the deduction of offsets.

The Department of the Interior was represented before the committee by the Commissioner of the Bureau of Indian Affairs and testified in favor of the enactment of this bill. The Department of Justice has submitted a report which reads as follows:

DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, May 15, 1952.

HON. JOHN R. MURDOCK,
*Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D. C.*

MY DEAR MR. CHAIRMAN: The attention of the Department of Justice has been called to the bill (H. R. 7487) to amend section 1 of the act approved June 27, 1947 (61 Stat. 189).

The act of June 27, 1947 (61 Stat. 189) authorized, ratified, and approved an agreement affecting lands in the Navajo Indian Reservation, N. Mex., under which the United States acquired rights to helium-bearing gas deposits in such

lands. Copies of the agreement and detailed information relating thereto are included in House of Representatives Document No. 212, Eightieth Congress, first session. The act of June 27, 1947, also conferred upon the Court of Claims jurisdiction over a suit against the United States by the Navajo Tribe of Indians for additional compensation if the Indians determined that the consideration paid under the agreement was less than reasonable, fair, just, and equitable. The cash consideration provided by the agreement has been paid to the Indians and they have instituted suit for additional compensation. In this litigation, which is pending, the United States has advanced the claim that it is entitled to offsets.

The apparent purpose of the bill under consideration is to amend the act of June 27, 1947 (*supra*) to bar the deduction of offsets and to provide for the allowance of interest. To accomplish this purpose the bill would amend section 1 of the act by adding the following language at the end of the third sentence of that section: "provided that interest shall be allowed on such sum at the rate of 4 per centum per annum from December 1, 1945, to the date of payment and no offsets shall be deducted from such sum."

The Department of Justice would have no objection to the allowance of interest, provided the date from which it is to be allowed is changed from "December 1, 1945" to "October 20, 1947," the latter date being the date on which payment of the consideration provided in the agreement actually was made.

This Department does, however, object to that portion of the bill which would bar the deduction of offsets. The grant of such a special exemption in favor of this particular group of Indians would be contrary to the treatment accorded claimants generally (28 U. S. C. 1503) as well as the treatment accorded other Indian claimants (25 U. S. C., secs. 70j and 475a). If a special exemption is granted in this instance, there is every reason to believe that the precedent thus established would be used to secure similar exemptions for other Indian claimants.

The possibility of a suit against the United States was not considered by any of the parties during the course of the negotiations leading up to the agreement. In fact, when the legislation ratifying the agreement was introduced it did not contain a provision authorizing such suit. This would seem to indicate clearly that the question of the allowance of offsets did not enter into the negotiations or otherwise affect the agreement entered into by the interested parties.

In view of the foregoing considerations, and since the United States already has made very important concessions to the beneficiaries of this bill, there would seem to be no justification for granting them the special treatment provided by the bill.

Accordingly, in order to meet the objections discussed above, it is urged either that the bill not be enacted, or, if it is to receive favorable consideration, that it be amended by striking the language "December 1, 1945, to the date of payment and no offsets shall be deducted from such sum" appearing on page 3, lines 3 and 4, and inserting in lieu thereof the language "October 20, 1947, to the date of payment."

Sincerely,

A. DEVITT VANECH,
Deputy Attorney General.

The Department of Justice, however, seems to indicate that this is a policy matter to be determined by the Congress, and although such report is unfavorable, the committee feels that to deny favorable consideration of this legislation would be to deny justice to these Indians who have relinquished to the Federal Government perhaps their greatest of all resources. It is the duty of the Government in contracting with its wards to act in all fairness. It seems only fair in the instant case to give favorable consideration to this legislation.

The committee unanimously recommends the enactment of the bill, as amended.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as introduced, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

ACT APPROVED JUNE 27, 1947 (61 STAT. 189)

That the Secretary of the Interior, acting through the Bureau of Mines, and the Navajo Tribe of Indians are authorized to enter into an agreement dated December 1, 1945, entitled "An agreement severing certain formations from oil and gas leases and substituting new leases as to those formations" and an "Amending agreement", affecting lands in the Navajo Indian Reservation, New Mexico, copies of which are published in House of Representatives Document Numbered 212, Eightieth Congress, first session; and said agreements are ratified and approved. If said Navajo Tribe of Indians shall, after investigation, deem the total consideration payable to it by the United States pursuant to such agreement dated December 1, 1945, as amended, to be in any respect less than reasonable, fair, just, and equitable, said tribe shall be entitled within three years after the date of enactment of this Act to institute suit against the United States in the Court of Claims for the recovery of such additional sum as may be necessary to compensate said tribe for the reasonable, fair, just, and equitable value of all right, interest, and property passing from said tribe to the United States under such agreement, as amended. Jurisdiction is hereby conferred upon the Court of Claims to hear and determine any suit so instituted and to enter final judgment against the United States therein for such sum, if any, in excess of the total consideration payable pursuant to such agreement, as amended, as such court may determine to be necessary to provided consideration in all respects reasonable, fair, just, and equitable. *[.] provided that interest shall be allowed on such sum at the rate of 4 per centum per annum from October 20, 1947, to the date of payment and no offsets shall be deducted from any sum determined by the court to be a reasonable, fair, just, and equitable consideration for the right, interest and property passing to the United States under and pursuant to said agreement of December 1, 1945, as amended; provided further that the foregoing provision relating to interest and offsets shall not extend to any other claim or claims asserted in any such suit, whether or not the same arise out of the subject matter of said agreement, but such other claim or claims, if any, shall be governed by the law relating to actions brought pursuant to 28 U. S. C., section 1505.* Appellate review of any judgment so entered shall be in the same manner, and subject to the same limitations, as in the case of claims over which the Court of Claims has jurisdiction under section 145 of the Judicial Code, as amended (28 U. S. C., sec. 250). Notwithstanding any contract to the contrary, not more than 10 per centum of the amount received or recovered by said tribe in satisfaction of any claim asserted under this section shall be paid to or received by any agent or attorney on account of services rendered in connection with such claim.

SEC. 2. The Secretary of the Interior, acting through the Bureau of Mines, is authorized to enter into an agreement dated September 19, 1946, with Continental Oil Company and Santa Fe Corporation entitled "Agreement for assignments of interests in oil and gas leases and for operations on the leaseholds" and two agreements supplemental thereto, affecting lands in the Navajo Indian Reservation, New Mexico, copies of which are published in House of Representatives Document Numbered 212, Eightieth Congress, first session; and said agreements are ratified and approved.

Approved June 27, 1947.

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